

The opinion in support of the decision being entered today was *not* written  
for publication and is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANDREAS FLOHR

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Appeal 2007-1347  
Application 09/786,080<sup>1</sup>  
Technology Center 3700

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Decided: May 14, 2007

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Before DONALD E. ADAMS, DEMETRA J. MILLS, and LORA M.  
GREEN, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from a final rejection of claims 1 to 17 under  
35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b).

WE AFFIRM.

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<sup>1</sup> Application filed February 28, 2001. Applicant does not claim the benefit  
of a prior application. The real party in interest is the Proctor and Gamble  
Company.

Claim 1 is representative:

1. A nonwoven web, wherein said web comprises:  
a first zone and at least one second zone, said first zone and said second zone having a bonded area, the bonded area of said second zone being greater than the bonded area of said first zone, said first zone having an effective open area of at least about 10 percent and a plurality of apertures, wherein each of said apertures having an effective size of at least 0.2 square millimeters.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

|             |              |               |
|-------------|--------------|---------------|
| Thompson    | US 3,929,135 | Dec. 30, 1975 |
| Wada et al. | US 5,746,729 | Mar. 5, 1998  |

#### ISSUE

The issue is whether Appellant has shown that the Examiner failed to present a prima facie case of obviousness of the claims under 35 U.S.C. § 103(a) over the combination of Wada and Thompson. More specifically, the issue is whether sufficient reason, suggestion, or motivation exists to combine the disclosures of Wada and Thompson; and whether this combination teaches a nonwoven web as set forth in Appellant's claimed invention.

#### Background

Appellant's specification describes an apertured, nonwoven web suitable for use as a topsheet on a disposable absorbent article. (Specification 1: 8-11.) The topsheet may be secured to a backsheet by bonds "or any other suitable attachment means." (*Id.* at 6: 1-21.) These bonds may include "heat bonds, pressure bonds, ultrasonic bonds, dynamic

mechanical bonds.” (*Id.* at 6: 19-21.) Appellant’s disclosure states that “bonds may be of various shapes and sizes [, e.g.,] circular, square, rectangular, linear, triangular, oval, elliptical, curvilinear, etc.” (*Id.* at 8: 9-12.) The topsheet has at least two zones having unequal amounts of bonded area. (*Id.* at 7: 12-14, 31-32; 8: 5-8.) Furthermore, the topsheet comprises a liquid pervious nonwoven web. (*Id.* at 7: 1- 12.) Figure 1 depicts a nonwoven web which includes a central zone 70 and an outer zone 72. (*Id.* at 7: 12-25.) There is a “difference in the amount of bonded area between the central zone 70 and the outer zones 72.” (*Id.* at 7: 31-32.)

## DISCUSSION

### Obviousness Rejection

Claims 1 to 17 stand rejected under 35 U.S.C. § 103(a) over Wada in view of Thompson.

Appellant concedes that the claims stand or fall together. (Br. 2.)

Essentially, Appellant claims a non-woven web which has first and second zones, each zone with bonded areas having specific characteristics, and the first zone has apertures of a specific size, 0.2 mm.

The Examiner contends, “Wada discloses all aspects of the claimed invention but remains silent as to the [size of the] apertures.” (Answer 3.)

The nonwoven web of Wada “comprises a plurality of apertures 10, as shown in figure 3.” (Answer 3-4.) The Examiner relies on Thompson for the disclosure of an absorbent article having a topsheet with a plurality of apertures 26, having an effective size of at least 0.2 mm<sup>2</sup>. (Thompson, col. 4, ll. 34-36, Answer 4.) Thompson’s topsheet “allows rapid flow of fluids

while preventing movement of moisture back through the topsheet 22.”  
(Thompson, col. 5, ll. 18-50, Answer 4.)

The Examiner concludes that

[i]t would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the topsheet of Wada with the apertures of Thompson, to allow rapid flow of fluids while preventing movement of moisture back through the web.

(Answer 4.)

Specifically, the Examiner argues that motivation is provided by Wada’s expressed desire “to improve the rate of fluid transfer and the disclosure of Thompson of conditions that optimize the rate of fluid transfer.” (Answer 6-7.) The Examiner further contends that Wada’s central zone contains bonds because it can be defined to “include[e] the bonds 15 around the perimeter of the central zone 6.” (Answer 7-8.)

Appellant contends that Thompson teaches away from using a nonwoven topsheet. (Br. 4.) We are not persuaded by this argument. Thompson states that its topsheet may be made of low density polyethylene, a nonwoven material. (Thompson, col. 4, ll. 55-60.) According to Appellant’s specification, a non-woven web material includes polyethylene. (Specification 8: 16.) Thus, Thompson teaches a non-woven web material within the scope of Appellant’s claimed invention.

Appellant argues that the reference disclosures cannot properly be combined because the Examiner has failed to establish a motivation to combine the two. (Br. 3.) An adequate showing of motivation to combine requires “evidence that ‘a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the

elements from the cited prior art references for combination in the manner claimed.”” *Ecolochem, Inc. v. Southern Calif. Edison Co.*, 227 F.3d 1361, 1375, 56 USPQ2d 1065, 1076 (Fed. Cir. 2000). Recently, in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385, 1396 (U.S. 2007), the Supreme Court reaffirmed that the "requirement of demonstrating a teaching, suggestion, or motivation to combine known elements in order to show that the combination is obvious [provides] .... a helpful insight" in making an obviousness determination.

The non-woven web of Wada includes apertures and the Examiner has provided evidence of a reason why one of ordinary skill in the art would have incorporated the aperture size of Thompson into the Wada non-woven web to allow rapid flow of fluids while preventing movement of moisture back through the web. (Answer 4.) Thus, the Examiner has provided evidence in the prior art of a motivation to combine Wada and Thompson.

Appellant further argues that even if a motivation to combine existed, the references fail to teach or suggest all of the claimed limitations. (Br. 5). More specifically, Appellant argues that “[b]ecause the Wada et. al [sic] reference teaches that the central zone 6 is not subjected to thermal embossing, the central zone 6 does not have a bonded area.” (Br. 5; cf. Wada at Fig. 2.)

The Examiner focuses on zones 6 and 7 of the non-woven web of Figure 1 of Wada. (Answer 3: 7-8.) Our analysis differs from that of the Examiner in that we direct Appellant’s attention to zone 5 (around the perimeter) and combined zones 6 and 7 (central zone) of Wada, Figure 1.

Zone 5 corresponds to zone 72 of Appellant's Figure 1, and combined zones 6 and 7 of Wada correspond to central zone 70 in Appellant's Figure 1. The zone 5 perimeter area of Wada has a greater bonded area than the central zone (combined areas 6 and 7) of Wada.

Appellant's position that Wada's central zone does not have a bonded area also lacks merit. Wada describes the central area bonds, including the perimeter bond surrounding zone 6, as "intermittent heat-sealing spots 15". (Wada, col. 2, ll. 14-21.) Referring to Figures 1 and 2 of Wada, Wada states that "[p]ortions of the top- and back-layers 2, 3 extending outward beyond a peripheral edge of the core 4 are bonded together along a seal line 5." (Wada col. 1, l. 67 - col. 2, l. 2.) Therefore, the combined zones 6 and 7 (central zone) of Wada includes bonding which is less than the bonding of perimeter zone 5.

In view of the above, we affirm the obviousness rejection of the claims over Wada in view of Thompson. Because our analysis differs somewhat from that of the Examiner, we designate the rejection a new ground.

## DECISION

The Examiner's rejection of claims 1-17 is affirmed.

Regarding the affirmed rejection(s), 37 CFR § 41.52(a)(1) provides "[a]ppellant may file a single request for rehearing within two months from the date of the original decision of the Board."

In addition to affirming the Examiner's rejection(s) of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12,

2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 CFR § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should the Appellant elect to prosecute further before the examiner pursuant to 37 CFR § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the Appellant elects prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

AFFIRMED; 41.50(b)

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